

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3447 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

SAEED - AHMED HABIBBHAI ANSARI

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 3447 of 2004
 MS BANNA S DUTTA for Petitioner No. 1
 MR AY KOGJE, AGP for Respondent No. 1-3
 RULE SERVED for Respondent No. 1-2
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CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/08/2004

ORAL JUDGEMENT

By filing this petition, the petitioner-detenu
has challenged his detention order dated 27-02-2004, by

which he is detained under PASA as a "bootlegger". Along with the said order, the petitioner is served with the grounds of detention. In the grounds of detention, there is a reference about two criminal cases registered against the petitioner. Both these cases are registered under the Bombay Prohibition Act. After considering aforesaid cases as well as after considering statements of two witnesses, the detaining authority has passed order of detention against the petitioner, which is under challenge in this petition.

2) Ms. Banna Dutta, learned advocate for the petitioner submitted that the last incident registered against the petitioner is of 18th September 2003, and after a considerable time of about more than five months the order of detention is passed on 27-02-2004. Therefore, there is a delay in passing the order of detention. It is submitted by her that even from the date of arrest of the petitioner there is a delay of about four and a half months in passing the order of detention. She further submitted that the statements of witnesses are recorded only with a view to cover up the delay in passing the order of detention. She submitted that in view of the delay in passing the order, order of detention is required to be quashed and set aside. In this behalf, reference is made to the decision of Elesh Nandubhai Patel Vs. Commissioner of Police, Ahmedabad City & Others reported in 1997 (1) G.L.H. 381 wherein this Court has observed in Para 21 as under:-

"21. In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996, i.e. after a delay of 5 months and 15 days. It is of course true that the detaining authority has relied on two incidents of 2nd October and 10th October 1996, both unregistered cases. I have gone through the allegations. I fail to understand if the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appeared to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This

unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V. State of U.P. reported in AIR 1990 SC 516 and Pradeep Nilkanth v. S.Ramamurthy reported in 1993(2) Suppli. SCC 61."

3) Unfortunately, no affidavit in reply has been filed by the authority explaining the delay in passing the detention order after the occurrence of last so called incident. Therefore, the averment made in the petition is not controverted by the authority. Under these circumstances, there is no other alternative but to set aside the order of detention on the ground of delay in passing the detention order from the date of incident.

4) At this stage, learned advocate for the petitioner made a voluntary statement that in case the petitioner is not yet released on bail, the petitioner will not apply for bail for a period of one month from today. She has also stated that in case the petitioner is released on bail, the petitioner will not enter areas of Vatva, Gomatipur and Amraiwadi Police Station of Ahmedabad city upto 30th November, 2004. This statement is recorded and it is for the police authority to monitor the compliance of this statement.

5) For the foregoing reasons, this petition is allowed. The order of detention dated 27-02-2004 is quashed and set aside. The detenu, Saeed-Ahemed Habibbhai Ansari is ordered to be set at liberty forthwith, if he is not required in connection with any other case. Rule is made absolute.

(P.B.Majmudar, J.)

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